

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ERIC HERBERT dba GAYLE
APARTMENTS,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 399

FINAL FINDINGS OF FACT,
CONCLUSION OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 8th day of November, 1973, at Seattle, Washington; and appellant Eric Herbert appeared pro se and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and Board member present at the hearing being Walt Woodward; and the Board having reviewed the transcript, examined exhibits, records and files herein and arguments of counsel and having entered on the 4th day of

1 January, 1974, its proposed Findings of Fact, Conclusion of Law and
2 Order; and the Board having served said proposed Findings, Conclusion
3 and Order upon all parties herein by certified mail, return receipt
4 requested and twenty days having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,
6 Conclusion and Order; and the Board being fully advised in the premises;
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusion of Law and Order, dated the 4th day of
10 January, 1974, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusion of Law and Order herein.

13 DONE at Lacey, Washington, this 5th day of February, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15 Walt Woodward
16 WALT WOODWARD, Chairman

17 W. A. Gissberg
18 W. A. GISSBERG, Member

19 Mary Ellen McCaffree
20 MARY ELLEN McCAFFREE, Member
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1 CERTIFICATION OF MAILING

2 I, LaRene C. Barlin, certify that I mailed copies of the foregoing
3 document on the 5th day of February, 1974, to each of the following
4 parties:

5 Mr. Keith D. McGoffin
6 Burkey, Marsico, Rovai
7 & McGoffin
8 818 South Yakima Avenue
9 Tacoma, Washington 98405

10 Mr. Eric Herbert
11 dba Gayle Apartment
12 12601 S.E. 61st Street
Bellevue, Washington 98004

13 Puget Sound Air Pollution
14 Control Agency
15 410 West Harrison Street
16 Seattle, Washington 98119

17 the foregoing being the last known post office addresses of the above-
18 named parties. I further certify that proper postage had been affixed
19 to the envelopes deposited in the U.S. mail.

20 LaRene C. Barlin
21 LARENE C. BARLIN
22 POLLUTION CONTROL HEARINGS BOARD
23
24
25
26

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STATE OF WASHINGTON

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HERBERT d.b.a. GAYLE APARTMENTS,

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PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHEB No. 399

FINDING OF FACT,
CONCLUSION AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at a formal hearing in the Washington Commerce Building, Seattle, Washington, at 1:30 p.m., November 8, 1973.

Appellant appeared pro se, respondent through Keith D. McGoffin.
Eugene Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

Arguments were made.

EXHIBIT A

1 From testimony heard, exhibits examined, arguments considered
2 and transcript reviewed, the Pollution Control Hearings Board makes
3 this

4 FINDING OF FACT

5 By stipulation it was agreed that the appellant, the Gayle Apartments,
6 12601 S.E. 61st Street, Bellevue, King County, was in violation of
7 Section 9.03 of respondent's Regulation I on May 16, 1973, when black
8 smoke was emitted from the boiler stack for at least seven consecutive
9 minutes of an opacity of Nos. 3 and 3 1/2 on the Ringelmann Scale.
10 It was agreed that the only issue is the \$50.00 penalty invoked in
11 connection with the above violation by Notice of Civil Penalty No. 892.

12 From this finding and from arguments made, the Pollution Control
13 Hearings Board comes to this

14 CONCLUSION

15 Appellant contends there should be no civil penalty inasmuch as
16 he is being disciplined for something which could not have been
17 prevented and for which he took prompt remedial action as soon as he
18 knew of the violation. He contends a black oil furnace occasionally
19 can experience a temporary breakdown without knowledge to the operator
20 thereof. He concedes, however, that a monitoring system, which would
21 notify the operator of a violation, is possible.

22 The Pollution Control Hearings Board finds that although the
23 penalty is not excessive, appellant is entitled to further mitigation.

24 Therefore, the Pollution Control Hearings Board issues this

25 FINDING OF FACT,
26 CONCLUSION AND ORDER
27

ORDER

The appeal is denied, but Notice of Civil Penalty No. 892 is remanded to respondent for immediate collection from appellant of \$25.00, the balance of \$25.00 to be suspended pending no similar violations for a period of six months from the date this Order becomes final.

DONE at Lacey, Washington, this 4th day of January, 197⁴.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

W. A. Gissberg
W. A. GISSBERG, Member

Mary Ellen McCaffrey
MARY ELLEN McCAFFREY, Member

FINDING OF FACT,
CONCLUSION AND ORDER